

**Amendments to the Drawings:**

Figure 2 and Figure 3 have been amended to correct a typographical spelling error. No new matter has been added.

Attachment: Replacement Sheets (2)

Annotated Sheets (2) Showing Changes

## **REMARKS/ARGUMENTS**

Amendments were made to the specification. No new matter has been added by any of the amendments to the specification.

Claims 1-22 are pending in the present application. Claims 1, 4, 8, 11, 15, 18, and 22 are amended. Support in the specification for amendments to independent claims 1, 8, 15, and 22 can be found at least on page 9, lines 20-25; on page 11, lines 9-25; on page 14, line 6; and also in Figure 3. Support in the specification for amendments to claims 4, 11, and 18 can be found at least on page 10, lines 13-21. Reconsideration of the claims is respectfully requested.

### **I. Examiner Interview**

Applicants thank Examiner Loan Truong for the telephone conference with Applicants' representative, Robert Rolnik, on April 17, 2006. The Examiner and Robert Rolnik discussed amendments to claims 1 and 4. Regarding the additional claim features of claim 1, the Examiner expressed that claim 1 might be allowable over the cited reference. However, no agreement was reached.

### **II. 35 U.S.C. § 101**

The Examiner rejected claims 15-21 under 35 U.S.C. § 101 as directed towards non-statutory subject matter. Applicants have amended the claims accordingly.

### **III. 35 U.S.C. § 102, Anticipation**

The Examiner rejected claims 1-22 under 35 U.S.C. § 102(b) as anticipated by *Mahalingham et al., Means for Allowing Two or More Network interface Controller Cards to Appear as One Card to an Operating System*, U.S. Patent 6,314,525 (November 6, 2001). This rejection is respectfully traversed.

Regarding claim 1 the Examiner states that:

In regard to claim 1, *Mahalingham et al.* disclosed a method in a device driver for handling a failure of a primary adapter in a data processing system, the method comprising:

monitoring the primary adapter for the failure (*MULTISPAN driver continuously monitors the activity of bound adapters, fig. 4, 508, col. 11 lines 49-63*); and

responsive to detecting the failure, switching to a standby adapter handled by the device driver (*when primary fails, on of the adapter in "READY" state is changed to "IN\_USE", fig. 2, 62, col. 11, lines 32-48*).

Office action of March 20, 2006, p. 3.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102(e) only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). In this case, each and every feature of the presently claimed invention is not identically shown in the cited reference, arranged as they are in the claims as amended.

Claim 1 as amended is as follows:

1. A method in a device driver for handling a failure of a primary adapter in a data processing system, the method comprising:
  - queueing data in a data queue used by the primary adapter;
  - monitoring the primary adapter for the failure; and
  - responsive to detecting the failure, switching to a standby adapter handled by the device driver, wherein the standby adapter uses the data in the data queue.

*Mahalingham* does not anticipate claim 1 as amended because *Mahalingham* does not teach the added feature of “queueing data in a data queue used by the primary adapter.” Likewise, *Mahalingham* does not teach the added feature that the “standby adapter uses the data in the data queue.” Therefore, under the standards of *In re Bond*, *Mahalingham* does not anticipate claim 1.

*Mahalingham* does mention the term “queue” in reference to a component in a server. For example, *Mahalingham* states that:

FIG. 11 is a hardware block diagram of a server with a legacy block 1346 and dual mirrored block 1348. In this embodiment, the server is an Intel architecture server. The legacy block maintains backward compatibility via an Industry Standard Architecture (ISA) bus with devices such as the keyboard, monitor, ports, and Basic Input/Output System (BIOS), a.k.a. the legacy components. These devices are identified as legacy components because their operation was part of the original IBM.RTM. PC specification defined in 1982. Forward compatibility with new high speed devices is provided via dual mirrored block 1348. This block includes redundant: bridges, busses, and devices; all capable of supporting high speed communications between the CPU 1350 and the devices. The performance of the dual mirrored block is unimpeded by slow speed legacy traffic which is handled in the legacy block.

The legacy block 1346 includes: CPU 1350, memory 1352, bridge-queue 1354A-B video/graphics card 1360, bridge-queue 1362A-B, parallel port 1364, communications port 1366, monitor 1368, keyboard 1370, system clock 1372 and bios 1374. The CPU and memory are connected to a system bus 1380 which operates at 66 MHz. *Bridge-que 1354A-B connects system bus 1380 to a peripheral component interface (PCI) bus 1382*. The PCI bus operates at 33

MHz. The video/graphics card 1360 is connected to the PCI bus 1382. *The PCI bus 1382 is connected to the industry standard architecture (ISA) bus 1388 via bridge-que 1362A-B.* The ISA bus 1388 operates at 6 MHz. The remaining legacy devices 1364-1374 are all directly connected to the ISA bus.

*Mahalingham*, col. 19, ll. 31-60 (emphasis supplied).

Thus, *Mahalingham* teaches that a “bridge queue” connects a system bus to a PCI bus. The “bridge queue” also connects the PCI bus to an ISA bus. However, this bridge queue is distinct from the data queue in amended claim 1 because the data queue in amended claim 1 is used by *the primary adapter*. Similarly, one of ordinary skill would know that the claimed data queue is not used by the primary adapter in *Mahalingham*. Moreover, this portion of *Mahalingham* does not teach that the standby-adapter uses the same data queue as claimed in amended claim 1.

For these reason, the cited portion of *Mahalingham* does not teach features of claim 1 as amended. Furthermore, nothing else in *Mahalingham* teaches or suggests these claimed features. Therefore, *Mahalingham* does not anticipate claim 1.

The remaining independent claims have been amended to contain features similar to those presented in claim 1. Therefore, *Mahalingham* does not anticipate the remaining independent claims for reasons similar to those presented in the response to the rejection of claim 1.

Similarly, *Mahalingham* does not anticipate the remaining dependent claims at least by virtue of their dependency on the independent claims. Furthermore, the dependent claims contain features not taught by *Mahalingham*. For example, *Mahalingham* does not teach the feature that the first port is assigned to an alternative media access control address prior to a switch from the primary adapter to the standby adapter, as recited in amended claims 4, 11, and 18. *Mahalingham* does not teach the feature of initiating a soft reset of the first port, as recited in claims 5, 12, and 19. *Mahalingham* does not teach the claimed feature that the primary adapter is a graphics adapter, as recited in claim 7, 14, and 21.

Because *Mahalingham* does not teach all of the features of the amended independent claims or of the dependent claims, *Mahalingham* does not anticipate any of the claims. Accordingly, the rejection under 35 U.S.C. § 102 has been overcome.

Furthermore, *Mahalingham* does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. *Mahalingham* actually teaches away from the presently claimed invention because *Mahalingham* teaches a method and apparatus that is realized external to the network interface controller driver software, and thus the queues. In contradistinction, amended claim 1 describes a data queue used by the primary adapter as well as a standby adapter using the data in the data queue. Absent the Examiner pointing out some teaching or incentive to implement *Mahalingham* and these claimed features, one of ordinary skill in the art would not be led to modify *Mahalingham* to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or

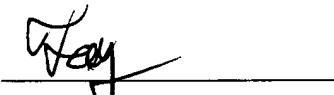
incentive to modify *Mahalingham* in this manner, the presently claimed invention can be reached only through an improper use of hindsight using Applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

**IV. Conclusion**

It is respectfully urged that the subject application is patentable over *Mahalingham* and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: June 15, 2006

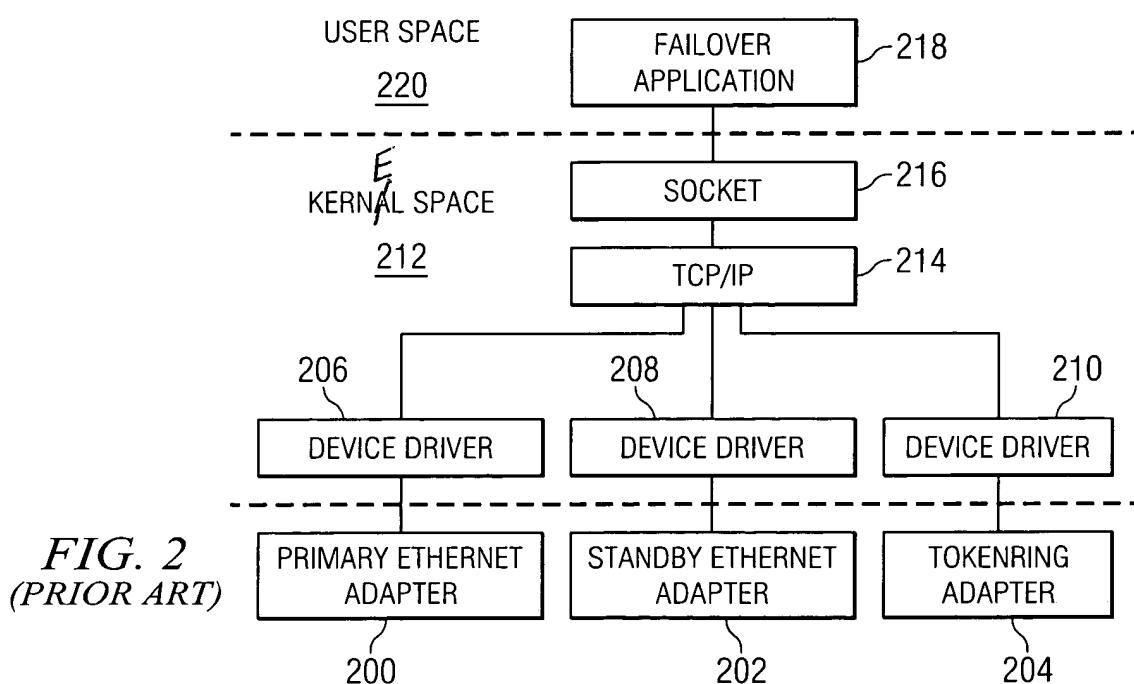
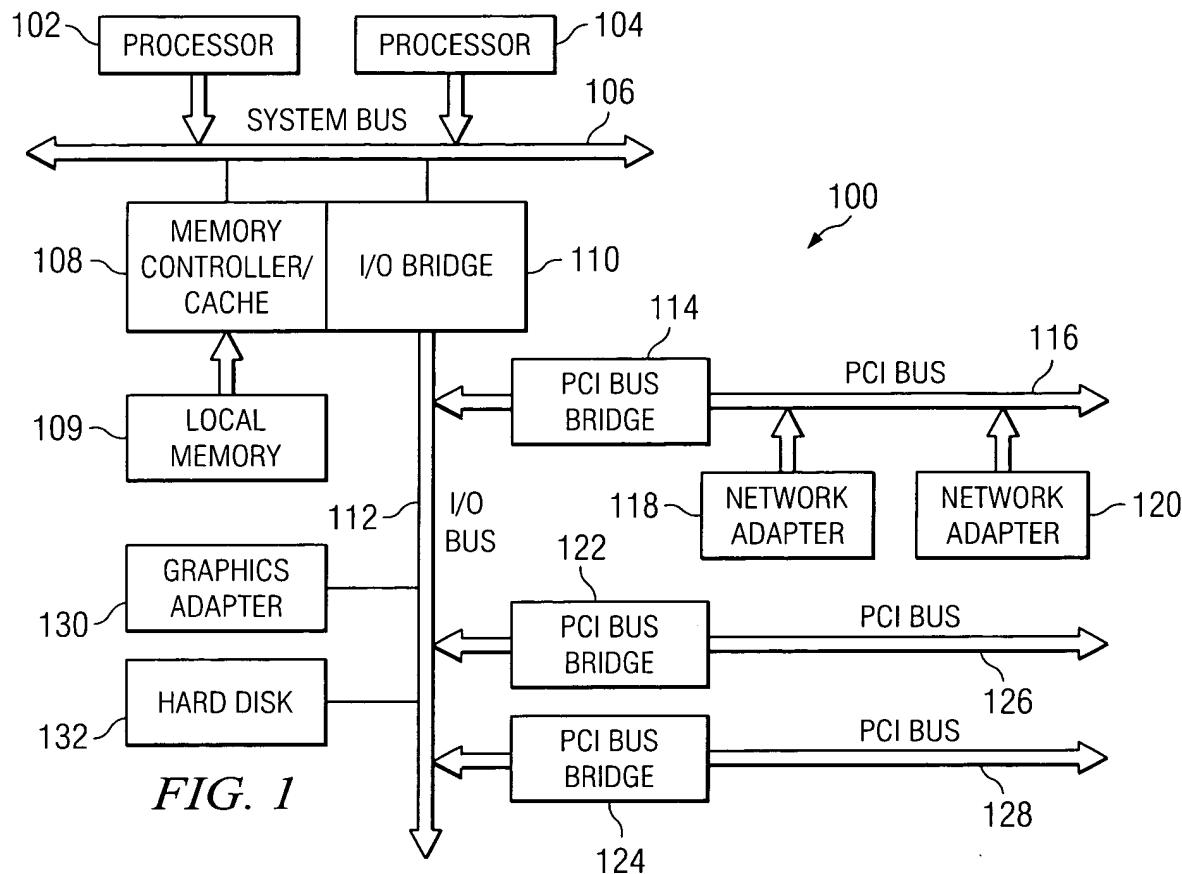
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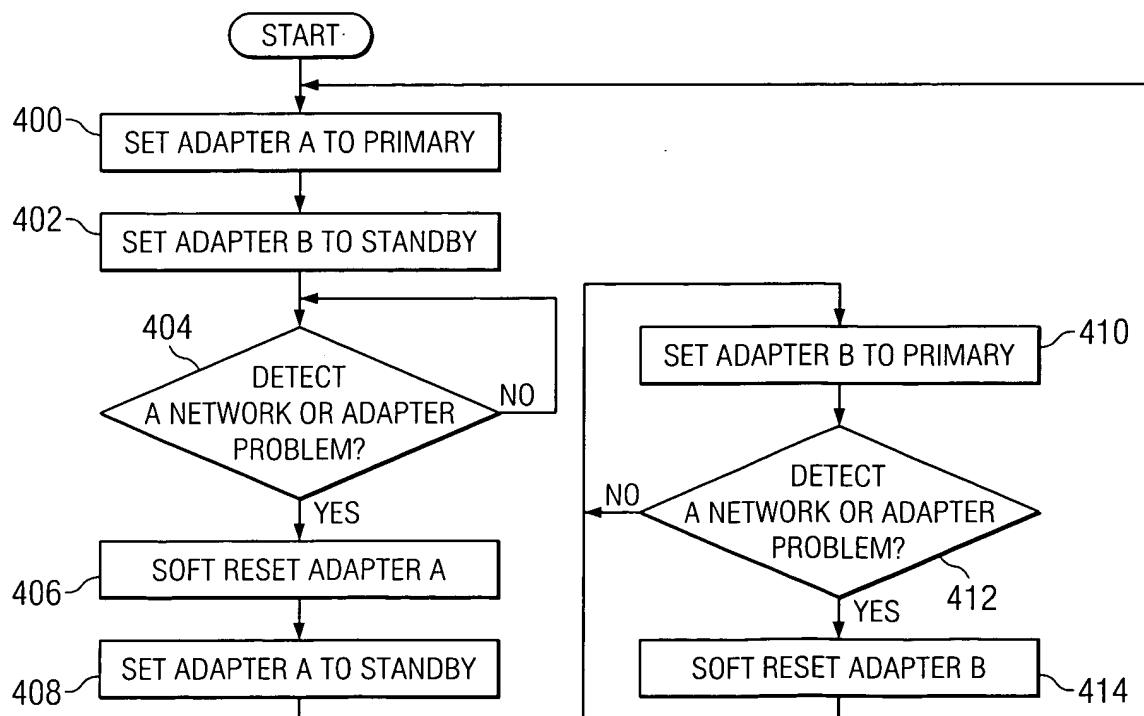
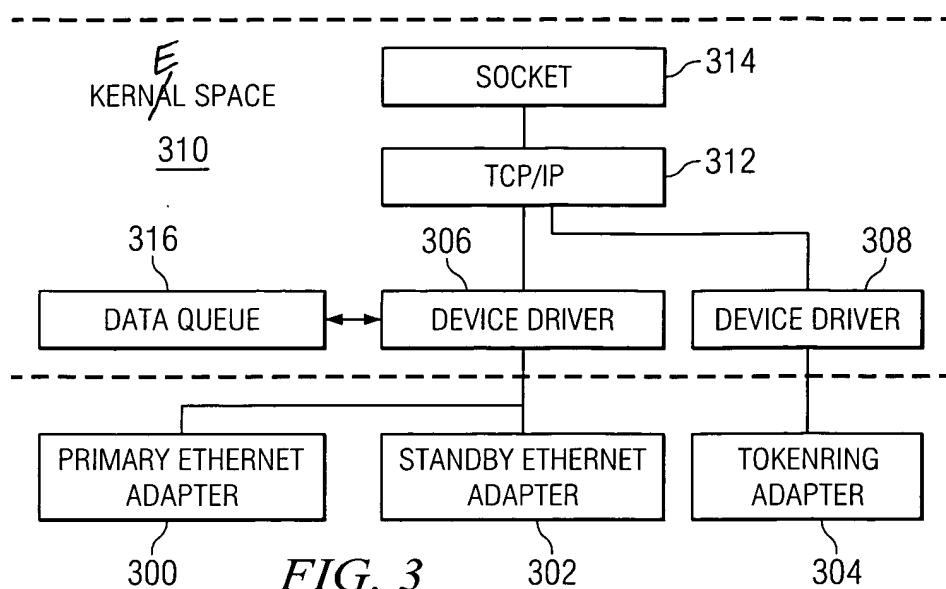


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**FIG. 4**